June 2, 2005

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

***Re: WC Docket No. 05-65***

Dear Ms. Dortch:

We write to respond to a claim by BT Americas Inc. and BT Infonet USA (collectively "BT") that the proposed merger of SBC and AT&T will somehow harm competition in the provision of Global Telecommunications Services ("GTS").[1] BT, one of the world's leading providers of GTS as well as the dominant local access provider in the United Kingdom, is an extraordinarily odd champion for that extraordinarily baseless claim.[2] BT did not acquire its GTS position through internal growth, but with a "buying spree" that included several U.S.-based companies.[3] In each case, BT convinced regulators to reject the same claim that BT raises here – namely, that a vertically integrated GTS provider that is the incumbent provider of local access in its home market poses an intolerable danger to the intensely competitive GTS segment.[4]

BT makes no effort to reconcile its positions here with its prior positions or the marketplace facts, because BT's only goal here is the patently illegitimate one of fostering delay and customer uncertainty to benefit its own commercial interests: "BT and the other international telecom giants, would love to not only have their cake but eat it too, by having a prolonged period of 'merger uncertainty' during which they could lure more U.S. businesses into their systems."[5] Indeed, the Chief Executive of BT's Global Service division recently confessed to the Wall Street Journal that while BT has filed a

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[1] *See Ex Parte* Letter from Kristen Verderame, BT, to Marlene Dortch (filed May 6, 2005) ("BT Ex Parte"); BT Reply Comments (filed May 10, 2005).

[2] Duande D. Freese, *The British Are Coming*, Tech Central Station (May 26, 2005) ("BT along with a near monopoly in its home residential market, has a global business network that operates in 200 countries over five continents, including points-of-presence in 14 major metropolitan areas in the United States, Toronto in Canada and Mexico City").

[3] *Id.*

[4] *See* EC Press Release, *Mergers: Commission approves acquisition of Radianz by BT* ("BT-Radianz Release") (Apr. 25, 2005) (available at http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/474&format=HTML&aged=0&language=EN&guiLanguage=en); *BT-Infonet*, Case No. Comp/M.3641, ¶ 8 (EC, Jan. 25, 2005) ("*BT-Infonet Order*").

[5] Duande D. Freese, *The British are Coming*, Tech Central Station (May 25, 2005).

formal opposition to the AT&T-SBC merger, it is actually "not interested in blocking the deal[]," prompting independent analysts to recognize that BT is engaged in "a tactical move to unsettle AT&T and MCI customers."[6] At the same time that BT was "calling on the U.S. regulators to block the SBC purchase of AT&T," it was telling investors "how the merger will let it grow its business by $1.6 billion here over the next two years at both AT&T's and MCI's expense."[7]

Given BT's attempt to abuse of the Commission's process, it should come as no surprise that BT's arguments are entirely lacking in merit. GTS are "a combination of voice, data, video and other telecommunications services that are offered by a single source or multiple sources over an integrated global or regional international network of owned or leased facilities, and that have equivalent (though not identical) quality, characteristics, features and capabilities wherever they are provided."[8] GTS "go beyond the provision of simple services" such as international voice and data transport, and typically include high-valued "managed" services.[9] Thus, the large multi-national corporations that purchase GTS are the most sophisticated buyers.[10]

The GTS segment is "very competitive, with operators competing hard on prices as well as improving their service offers."[11] Numerous carriers with substantial resources and established reputations – including BT-Infonet-Radianz, Cable & Wireless, Colt, France Telecom-Equant, Global Crossing, Level 3, MCI, NTT, SingTel, Sprint, T-Systems, and Qwest – compete for the business of these sophisticated multi-national corporations.[12] Although many competitors (including BT, Cable & Wireless, France Telecom-Equant, Qwest, NTT, and T-Systems) are vertically integrated incumbent local access providers in their home markets, the key fact is that *none* owns local access facilities in all or even a significant minority of the locations needed to provide GTS.

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[6] Dave Pringle, *BT is Mixed on U.S. Mergers*, The Wall Street Journal, at B1 (May 17, 2005) (chief executive of BT's Global Services division reports that BT expects substantial sales to U.S.-based multi-nationals and that "BT could benefit from the mergers").

[7] Duande D. Freese, *The British Are Coming*, Tech Central Station (May 25, 2005); *see also id.* ("Considering its own favorable circumstances and residential base at home, BT showed a lot of chutzpah in calling on the U.S. regulators to block the SBC purchase of AT&T while announcing how the merger will let it grow its business").

[8] *AT&T Corp., British Telecomm., et al.*, Memorandum Op. and Order, 14 FCC Rcd. 19140, ¶ 29 (1999) ("*AT&T-BT JV Order*"); *see also BT-Infonet Order* ¶ 8 (GTS are complex "telecommunications services linking a number of different customer locations, generally in at least two different continents and across a larger number of different countries.").

[9] *Id.*; *see also France Telecom-Equant*, Case No. Comp/M.2257, ¶ 21 (EC, Mar. 21, 2001) ("*France Telecom-Equant Order*").

[10] *AT&T-BT JV Order* ¶ 25; *see also France Telecom-Equant Order* ¶ 19.

[11] *See* BRC Consultancy, *World Data Networks*, at 16 (Feb. 2004).

[12] *See AT&T-BT JV Order* ¶¶ 29-39; *see also France Telecom-Equant Order* ¶ 37; *BT-Infonet Order* ¶¶ 12-13.

This is also true for each of SBC and AT&T on a stand alone basis and will be true of the combined company.

In this environment, regulators on both sides of the Atlantic have recognized that the breadth, vigor and durability of GTS competition are in no way threatened by mergers of the type proposed by SBC and AT&T. Thus, for example, the Commission held that the AT&T-BT Concert Joint Venture was in the public interest and would not lessen competition for GTS despite BT's alleged dominance in the U.K.[13] Likewise, the Commission of the European Community ("EC") approved the mergers of France Telecom-Equant, BT-Infonet, and BT-Radianz. In each of these cases, regulators found increased "vertical integration would not lead to any harmful effects on the market for extranet services to the . . . upstream market for global telecommunication services (GTS), given the presence of alternative telecommunication operators."[14]

As detailed below, BT points to nothing that could lead to a different conclusion with respect to the proposed merger of SBC and AT&T.

**The Merger Raises No Horizontal Concerns.** The proposed merger raises no horizontal concerns for the simple reason that AT&T and SBC do not compete in the provision of GTS. BT attempts to obscure that fact by first attributing a grossly inflated market share to AT&T,[15] and then asserting that SBC was poised to enter the GTS segment as a particularly significant potential entrant.[16] Both assertions are false.

The sole support for BT's claim that AT&T's current market share for GTS is 30-40% is a report issued by Ovum that was referred to by the EC in its order approving BT's acquisition of Infonet.[17] The Ovum data can be given no weight. The EC expressly noted that numerous competitors questioned the data in the Ovum report and offered very different estimates of market share.[18] Indeed, the Ovum report itself expressly acknowledges that, because of data limitations, the report cannot be used as a reliable indicator of AT&T's GTS market share.[19] Ovum reports as "GTS" revenues for AT&T *all* of AT&T's business services revenues, including entirely domestic U.S. services that are not provided to multi-national customers and that account for the vast majority of AT&T's business services revenues.[20] Ovum thus included as GTS revenues the

[13] *AT&T-BT JV Order* ¶ 63 ("Market conditions on the U.S.-U.K. route make it highly unlikely that AT&T and BT could successfully engage in a strategy to raise rivals' costs").

[14] *See* BT-Radianz Release; *BT-Infonet Order* ¶ 18; *France Telecom-Equant Order* ¶¶ 41-49.

[15] BT Reply at 6.

[16] *Id.* at 6-7.

[17] *Id.* at 6; BT Ex Parte, Att. at 4.

[18] *BT-Infonet Order* ¶ 14.

[19] *See* Ovum, *MNC Providers in Europe – 2004* (Oct. 2004).

revenues that AT&T earns from its government, wholesale, and domestic small business segments.

In addition to overstating AT&T's revenues, the Ovum report understates total industry GTS revenues. Ovum considered only the GTS revenues associated with "MNC Providers in Europe," and did not include the GTS revenues of such prominent providers as Sprint, NTT, SingTel, China Netcom, Telefonica, Telstra and VSNL. The Ovum report is thus far off the mark. Indeed, the Commission found that AT&T's market share was 16% in the *AT&T-BT JV Order* and, since that time, GTS competition has only grown and AT&T estimates that it now has only a **[CONFIDENTIAL BEGIN]** *** **[CONFIDENTIAL END]** share.[21]

Nor can SBC be considered a significant potential entrant. As the courts have recognized, a merger with a potential competitor can be deemed to lessen competition only if the relevant market is "concentrated";[22] there are few other firms with similar capabilities;[23] and there is "clear proof" that the acquiring firm would have in fact entered.[24] None of these conditions is met here. GTS is not concentrated, as there are numerous, established providers. SBC's international operations, assets and expertise are limited, and it had no pre-merger plans to enter GTS. To the contrary, SBC has focused on serving domestic U.S. business customers with operations heavily concentrated in SBC's region. As Mr. Kahan noted in his Declaration filed with the Joint Application, SBC does not even attempt to win bids where 20% or more of the traffic is

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[20] *See id.* at 22 ("The [revenue] figure for Cable & Wireless includes significant amounts of non-MNC business, as does the figure for AT&T consequently these are not directly comparable with the others."); *id.* at 18 note ("because not all of the providers analyzed in this report are 'pure' MNC providers, we have attempted to use the numbers which most closely reflect the MNC business of these providers. However, in some cases [including AT&T], such a breakdown is not available and so the figures shown here do not fully reflect the MNC business of these providers").

[21] *BT-AT&T JV Order* ¶ 42. Similarly, a recent report from Forrester estimates that AT&T has approximately a 12% share of multi-regional enterprise WAN service. *Forrester Wave: Global WAN Services, Q2 2005*, at 3 (May 11, 2005). The report also concludes that Equant, BT, MCI, T-Systems, Cable & Wireless, Sprint, and NTT are strong competitors in this area (with Equant being considered the top firm of all providers).

[22] *United States v. Marine Bancorporation*, 418 U.S. 602, 630 (1974) ("The potential competition doctrine has meaning only as applied to concentrated markets . . . where there are dominant participants . . . engaging in interdependent or parallel behavior and with the capacity effectively to determine price and total output of goods or services").

[23] *Mercantile Tex. Corp. v. Board of Governors*, 638 F.2d 1255, 1267 (5th Cir. 1981) ("If there are numerous potential competitors waiting in the wings, elimination of . . . one potential entrant would not be significant.").

[24] *FTC v. Atlantic Richfield Co.*, 549 F.2d 289, 296-97 (4th Cir. 1977) (the evidence "fails to show a significant commitment at the decisional level that Arco was seriously considering entry").

international.[25] This is a result of the fact that SBC has no capabilities to serve these customers.

**The Merger Raises No Vertical Concerns.** BT's assertion that the merger will harm GTS competition by providing SBC with "a much more powerful incentive to favor its affiliate over rivals in the GTS market" is equally baseless.[26] There is no basis for concluding such vertical integration will disable GTS suppliers that are not vertically-integrated for competing effectively for GTS business. Even if the provision of GTS is highly dependent on local connectivity,[27] it is, by definition, not highly dependent on local connectivity in any single country. That is why, as noted, the EC expressly rejected claims that BT and France Telecom could "leverage [their] alleged dominant position in [their] incumbent markets to engage in discriminatory behavior when providing transatlantic connectivity services to competing suppliers."[28]

BT suggests that the merger of SBC and AT&T is somehow different and that SBC/AT&T should not be allowed to enjoy the same vertical integration that BT and many other GTS suppliers already enjoy and that BT concedes generally "promotes consumer welfare and the public interest."[29] Again, the facts foreclose BT's claims.

By definition, GTS involves customers who have locations in at least two different countries,[30] and, as BT itself concedes, typically involve service "in at least two different continents and across a larger number of different countries."[31] Unlike other GTS providers including BT, Deutsche Telekom, France Telecom, and NTT, with nationwide home market local access facilities, SBC is the incumbent local access provider in a minority of the locations in the United States. Thus, in many instances, the customer seeking to purchase GTS – including U.S. based multi-nationals and non-U.S.-based multi-nationals with U.S. locations – has *no* need for connectivity in SBC's local access service areas.

There are approximately 6600 companies worldwide that could be said to fit even the U.S.-centric GTS customer profile that BT advocates.[32] Overall, these 6600

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[25] Public Interest Statement, Kahan Dec. ¶ 27.

[26] BT Reply at 16.

[27] *Id.* at 8.

[28] *BT-Infonet Order* ¶ 17; *France Telecom-Equant Order* ¶¶ 41-49; BT-Radianz Release.

[29] BT Reply at 3 n.1.

[30] *AT&T-BT JV Order* ¶ 28.

[31] BT Reply at 4 n.4 (citing *MCI WorldCom/*Sprint, Case No. COMP/M.1741 (EC, June 28, 2002)).

[32] These figures were obtained from Dun & Bradstreet's Worldbase Database (March 2004). For U.S.-headquartered companies, we extracted from the database the companies that operate in at least *two* different countries and have more than 20 sites. For non-US-headquartered companies, we extracted from the database the companies that operate in at least *three* different countries and that have at least 20 sites. If anything, this lower qualifying threshold over represents the amount of US-headquartered companies on the list, and US-headquartered companies tend to have more sites in the US than outside the

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companies have approximately 1.55 million office locations that potentially need to be connected to a global network. Of these 1.55 million office locations, only about 295,000 are in SBC states.[33] This amounts to less than 19% of GTS-eligible locations, a statistic that is not materially different from percentage of GTS-eligible locations in the home markets of other vertically integrated GTS suppliers.[34] For example, about 232,000 (or 15%) of GTS-eligible locations are in the U.K., where BT is the incumbent local access provider, and about 173,000 (or 11%) are in France, where France Telecom-Equant is the incumbent provider.

Citing an 11 year old complaint, BT suggests that over half of all GTS customer headquarters are in the U.S.[35] Even if this were accurate at the time (or relevant to how many customer locations are in SBC territories), it no longer is true. Europe and Asia are growing relative to the U.S. as decision-making headquarters of multi-national corporate activity, and current statistics, accordingly, overstate any forward-looking significance of SBC's local service area. The Forbes 2000 list of the world's largest international companies shows, for example, that while 44% of the Forbes 2000 multi-national companies were headquartered in the United States in 2003, only 36% of those companies are now headquartered in the United States. In contrast, the percentage of the Forbes 2000 companies headquartered in Europe increased from 25% in 2003 to 30% in 2005.

Of course, SBC is not the sole provider of local access even in the areas where it is the incumbent provider. SBC faces substantial competition for special access service in the densest business districts where large multi-national GTS customers are most commonly located and for the types of very high bandwidth services typically purchased by GTS customers to serve their major facilities. There are literally scores of competing local exchange carriers operating in SBC's territories that together have deployed fiber connections to thousands of the most significant commercial buildings in SBC's service areas.[36] And even where bypass facilities do not exist today, that does not, as BT suggests, mean that rival GTS providers have no economic choice but to purchase local access from SBC. Rather, the Commission has found that it is economically feasible for

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US. As such, this analysis is highly conservative as a proxy for global MNC site distribution because it does not include many non-U.S.-headquartered companies that purchase GTS services to connect multiple locations in only two countries, and non-US headquartered companies tend to have more sites outside the US than in the US.

[33] This overstates the number of locations that are actually in SBC's incumbent local service territories, because a number of large cities in states otherwise served by SBC are not within SBC's service territories but instead are served by other incumbent carriers. This is particularly significant with respect to California, where Verizon serves much of Los Angeles, for example.

[34] Further, according to the Dun & Bradstreet Worldbase Database, only 17% of the 6600 MNCs are headquartered in SBC states.

[35] BT Reply at 6; *see also* BT Ex Parte, Att. at 5.

[36] SBC/AT&T Reply, Carlton-Sider Reply Dec. ¶¶ 31-52.

competitive carriers to bypass SBC and deploy facilities to serve high-demand locations.[37] Thus, where a GTS provider is seeking to obtain access to high demand locations – and the customers that purchase GTS typically have the highest demand of any users – the GTS provider can "terminate traffic with many facilities-based carriers in the U.S.; it may terminate traffic via ISR at very low rates; and it may build its own facilities in the U.S. and self-correspond."[38]

Nor does BT establish that U.S. local access prices tend to be significantly higher than in the United Kingdom.[39] Independent analysts have reached the opposite conclusion: they report that U.S. access costs are amongst the *lowest* in the world, including the United Kingdom.[40]

The only "evidence" BT provides to support its claim is a chart that purports to show that DS1 and DS3 prices in SBC's territories are higher than what BT charges in the U.K. But BT fails to provide any description of how these comparative rates were derived, let alone the detailed information necessary to allow the Commission to determine if the comparison was done on an apples-to-apples basis. For example, local access charges in both the U.S. and the U.K. depend on circuit mileage, but BT fails to disclose what assumptions it made on that parameter.

But even with the limited information BT has provided, it is clear that the charts are misleading. For example, BT asserts that a 1 Mbps circuit costs $124 per month in the U.K. However, on its website, BT provides an illustrative example of how it would price a typical 1 Mbps circuit.[41] According to that presentation, the recurring price for such a circuit is £752 per annum for the "local end" (loop) and £3,580.2 per annum for the "main link" (transport)[42] – which amounts to a monthly rental charge of £361.02.[43] At current exchange rates ($1.8 = £1),[44] that translates to approximately $650 per month

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[37] *In re Unbundled Access to Network Elements*, Order on Remand, WC Dkt. No. 04-313, CC Dkt. No. 01-338, 2005 WL 289015, ¶¶ 166-81 ("*Triennial Review Remand Order*").

[38] *AT&T-BT JV Order* ¶ 64.

[39] BT Reply at 11; BT Ex Parte at 9-10.

[40] Teligen, *Local Access Circuit Pricing for Key Asia-Pacific Countries vs. Each Other, the European Union & OECD Countries* (Nov. 2003), at Figures 8 & 9.

[41] The representative pricing example is available at www.btwholesale.com/ppc (PPC Pricing Presentation).

[42] This conservatively does not include BT's £208.80 charge for "optional enhanced maintenance." In addition, while the BT example includes an infrastructure rental charge at the purchaser's point-of-presence, this significant charge (£607 per annum) was conservatively excluded.

[43] (£752 + £3,580.2)/12 = £361.02.

[44] *See* http://www.bloomberg.com/markets/currencies/fxc.html (visited 6/1/05).

– well in excess of the amount that BT itself claims that SBC charges on average for a DS1 circuit.[45]

Indeed, BT currently charges £1136.42 per annum (or £95 per month) for just a "zero-mileage" 1 Mbps private line circuit.[46] At the current exchange rate of $1.8 per pound, that amounts to $170 per month. Further, BT imposes a £1744.62 non-recurring charge for connecting a new 1 Mbps circuit.[47] Conservatively amortizing the non-recurring charge over the five year term apparently used by BT results in an amortized charge of £29 per month (or $52 per month). Thus, even ignoring BT's substantial mileage-sensitive transport charges[48] BT charges at least $222 per month for a new 1 Mbps circuit – nearly twice the amount listed in its chart.

At the same time that BT understates its own special access charges, it overstates SBC's charges. Although BT provides no information on how it actually calculated SBC's ostensible monthly charges, it is evident that BT failed to take into account various SBC discount plans that substantially reduce the per-month charge a subscriber pays. Moreover, BT apparently added significant mileage charges that would not typically be incurred by customers located in dense metropolitan areas. It also assumes an inefficient network configuration that would rarely, if ever, be used by large, sophisticated customers in the GTS segment.[49]

In short, there is no basis for the Commission to conclude that SBC's special access charges are any more significant as a component of GTS services than BT's local access charges. To the contrary, it appears that the opposite is true. For the same reasons that whatever "home court advantage" BT derives from its UK local access facilities has

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[45] The pricing example is based on rental that were apparently in existence for the time period (2004) at issue in BT's rate comparison. But even if current prices were used, that would not materially change the results. BT's current wholesale recurring charges are very close to those used in BT's pricing example. *See* www.btwholesale.com/ppc (PPC Price List (Section B8, § 8.03)). Applicants estimate that using current prices would reduce the monthly rental charge for the representative 1 Mbps private line circuit by only about 5% (from approximately $650 per month to $617 per month).

[46] For a private line circuit that includes a "local end" and a "main link" – *i.e.*, a typical circuit that has a "loop" and "transport" facility used to connect a carrier's POP to a customer location – BT charges £712.16 and £424.26 per annum, respectively, for these elements of the circuit. *See* www.btwholesale.com/ppc (PPC Price List (Section B8, § 8.03)).

[47] BT's nonrecurring charges for new circuit connections are available at www.btwholesale.com/ppc (PPC Price List (Section B8, § 8.02)).

[48] *See* www.btwholesale.com/ppc (PPC Price List (Section B8, § 8.03)) (BT charges £46.66 per km per annum for the "terminating segment" of main link/transport and £102.24 per km per annum for the "trunk segment" of main link/transport).

[49] Specifically, BT assumes that customers would use DS1 or DS3 circuits on an end-to-end basis, when, in reality, an end user channel termination facility generally would be multiplexed onto higher capacity interoffice transmission and/or entrance facilities, which would significantly reduce the end-to-end per-unit cost.

not disabled other competitors in the intensely competitive GTS segment, SBC vertical integration will have no such effect.

BT complains that the Commission is currently evaluating allegations by U.S. and non-U.S. local access purchasers that SBC and other incumbent local access providers have experienced high rates of return for certain local access services and that additional price and non-price regulation on incumbent-provided local access may be warranted in some areas.[50] But that only confirms that BT's claims are not merger-specific and can be addressed in the Commission's ongoing special access rulemaking proceedings. There is no basis for the Commission to pre-judge those industry-wide proceedings or conclude that they will not be adequate to address any legitimate concerns. The Commission has repeatedly held – in findings upheld by the courts of appeal – that it is fully capable of using direct price and non-price regulation to protect against any real and substantial threats of access-related predatory behavior.[51] If problems are found to exist – and SBC strongly disagrees with BT's characterization of U.S. special access competitiveness – the Commission has made clear that it will appropriately modify its regulations, which will be fully applicable to a merged SBC-AT&T.

But even if there were some reason why vertical integration by a U.S.-based GTS provider could be viewed any differently than the commonplace vertical integration by many non-U.S. based providers of GTS services, BT's argument that SBC/AT&T will have an increased "incentive" to "price squeeze" GTS rivals is mistaken. Preliminarily, SBC *already* provides both local access and "downstream" retail services that rely on local access. Under BT's theory, SBC therefore already has the incentive to discriminate against retail rivals that rely upon its local access services by charging "high" wholesale rates or otherwise discriminating. And SBC has no ability to single out GTS providers for even higher local access pricing, because SBC is required to tariff its special access services and to provide them on a nondiscriminatory basis to any similarly situated purchaser. Further, in many instances, GTS providers do not directly purchase local access services from incumbent carriers, but instead purchase nationwide termination services from long distance carriers (that in turn purchase local access from incumbent carriers). SBC thus has no ability to tell when such carriers are terminating their own long haul traffic or traffic for a GTS provider.

In all events, the price discrimination hypothesized by BT would be contrary to the combined firm's economic interest. Even assuming that charging a "low" retail rate might, in BT's skewed scenario, allow SBC to win more retail business from GTS rivals

[50] *See* BT Reply at 9-10.

[51] *See, e.g., Access Reform Order, Price Cap Performance Review of Local Exchange Carriers*, First Report and Order, 12 FCC Rcd. 15982, ¶¶ 277-81 (1997), *aff'd, Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 548 (8th Cir. 1998); *Implementation of the Local Competition Provisions of the Telecomms. Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587, ¶¶ 19-20 (2000), *aff'd, CompTel v. FCC*, 309 F.3d 8 (D.C. Cir. 2002); *Bell Atl. Mobile Sys. Inc. and NYNEX Mobile Communications Co.*, Memorandum Opinion and Order, 12 FCC Rcd. 22280, ¶ 15, n.44 (1997); *Application of GTE Corp. and Bell Atlantic Corp.*, Memorandum Opinion and Order, 15 FCC Rcd. 14032, ¶¶ 196-98 (2000).

(notwithstanding that many of those rivals have their own home country advantages), those new sales would be accompanied by the *loss* of higher margin wholesale special access sales to the rivals that would otherwise have provided the retail services.[52] As the Commission has recognized, predatory conduct involving profit sacrifice is only rational if it achieves durable market power in downstream markets that allows the "the integrated firm . . . to raise the downstream price of the end-user service long enough to recoup its losses after its rivals have exited the market, without inducing new entry."[53]

BT does not even remotely demonstrate that the merger will enhance the likelihood that SBC/AT&T will ultimately gain the ability to charge "higher prices" to its GTS customers.[54] As noted, local access in the SBC region constitutes a trivial percentage of the global costs of most GTS contracts. At the same time, AT&T has a relatively small share of the GTS market and obviously has no real prospect of gaining a dominant position in that intensely competitive market. Many of AT&T's GTS rivals are large established carriers with extensive global experience and assets. The costs of these deployed networks are sunk. Moreover, many are incumbent local access providers in home jurisdictions that contain GTS locations comparable to the number that are in SBC's territories albeit on a nationwide basis as opposed to SBC's more regional incumbency. To the extent that SBC/AT&T can be said to enjoy a cost advantage in the U.S. for the (minority) of GTS locations in SBC's territory, BT, Deutsche Telekom, France Telecom, NTT and other GTS providers enjoy the same advantages in their own home territories. It is therefore fanciful to suggest that SBC/AT&T could drive these carriers out of the market and thereby gain sustainable GTS market power.

In sum, the merger will have no adverse "horizontal" or "vertical" effects that would lessen vigorous GTS competition. BT's transparent efforts to use the regulatory process to gain a competitive advantage in the GTS marketplace should be rejected.[55]

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[52] The very premise of the commenters' arguments in this regard is that SBC's special access prices are too high and that its wholesale margins are therefore higher than those obtainable in intensely competitive markets such as retail business services markets.

[53] *Merger of MCI* Communications *Corp. and British Telecommunications PLC*, Memorandum Opinion and Order, 12 FCC Rcd. 15351, ¶ 162 (1997).

[54] BT Reply at 19.

[55] BT has also repackaged several claims that were advanced by other commenters in the initial round of comments and that SBC and AT&T fully addressed in the Joint Opposition. *Compare* BT Reply at 14-15 (claiming merger will reduce special access competition) *with* SBC/AT&T Reply at 31-48 (demonstrating no material loss of access competition); *compare* BT Reply at 15 (claiming that merger will result in customer foreclosure) *with* SBC/AT&T Reply at 92-94 (showing that AT&T is a competitively insignificant purchaser of wholesale local private line services); *compare* BT Reply at 20-22 (SBC/AT&T will forbear from competing against Verizon/MCI) *with* SBC/AT&T Reply at 150-58 (showing SBC/AT&T will have strong incentives to continue aggressive competition against Verizon); *compare* BT Reply at 22-29 (claiming that the merger will lessen competition for Internet backbone services) *with* SBC/AT&T Reply at 60-72 (demonstrating no material loss of Internet backbone competition).

Sincerely,

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|---|---|
| SBC Communications Inc. | AT&T Corp. |
| /s/ Gary L. Phillips | /s/ Lawrence J. Lafaro |
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cc: Chairman Kevin Martin
Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Daniel Gonzalez
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Sam Feder
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